



**REPUBLIC OF KENYA**  
**POLITICAL PARTIES DISPUTES TRIBUNAL**  
**COMPLAINT NO. 136 OF 2017**

**CARREN AJWANG ODHIAMBO.....COMPLAINANT**

**VERSUS**

**ORANGE DEMOCRATIC MOVEMENT.....1<sup>ST</sup> RESPONDENT**

**PRISCA AUMA MISATI.....2<sup>ND</sup> RESPONDENT**

**RULING**

*Summary of the Case*

1. The 2<sup>nd</sup> Respondent, aggrieved by this Tribunal’s judgment delivered on 12<sup>th</sup> May 2017, approached the Tribunal for review of the said judgment on two main grounds, namely; apparent error on the face of the record and discovery of new evidence that was not available at the time she approached the Tribunal.
2. As relates to the first ground, it the 2<sup>nd</sup> Respondent’s case is that having filed a preliminary objection challenging the jurisdiction of this Tribunal, the parties were asked to put in their skeleton submissions on the preliminary objection, which they did. The 2<sup>nd</sup> Respondent further averred that as opposed to rule on the issue of whether it had jurisdiction, the Tribunal proceeded to not only hold that it had jurisdiction but also went ahead to enter judgment in favour of the Claimant without according the 2<sup>nd</sup> Respondent the opportunity to respond to the complaint on merit.
3. With regard to the second ground, the 2<sup>nd</sup> Respondent explained that she was out of the country on official duty in Rwanda at the time the said preliminary objection was

filed and determined, and as such, did not get the opportunity to swear affidavit of reply to the Claimant's complaint.

4. In response, the Claimant opposed the 2<sup>nd</sup> Respondent application herein arguing that the grounds adduced by the 2<sup>nd</sup> Respondent were not merited under the law governing the application for review.

#### **Issue for Determination**

5. The primary issue for determining in this application is whether the 2<sup>nd</sup> Respondent's case is merited.

#### **Analysis**

6. The law on review of judgment is underpinned in the *Civil Procedure Act, Cap 21* and *Civil Procedure Rules* in *section 80* and *Order 45*, respectively, which set out three grounds upon which a court may consider an application for review.
7. These are, first, the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by such applicant at the time when the decree was passed or the order made. Second, the existence of a mistake or an error apparent on the face of the record and third, any other sufficient reason.
8. The three grounds are what ordinarily would define the boundaries of triable issues whenever a defendant approaches a court for a review of its own judgment as was held in the case of *Ndungu Njau vs. National Bank of Kenya*.
9. The 2<sup>nd</sup> Respondent has averred that the Tribunal, as opposed to rule on the preliminary objection in which she sought to challenge the Tribunal's jurisdiction, proceeded to not only hold that it had jurisdiction but also went ahead to enter judgment in favour of the Claimant without according the 2<sup>nd</sup> Respondent the opportunity to respond to the complaint on merit. Further, in addition at the time the preliminary objection was filed and determined, she was on official duty in Rwanda.

Hence, she did not get the opportunity to swear affidavit to reply to the Claimant's complaint.

10. In terms of this Tribunal's jurisdiction, we hasten to point out that it is a trite law that a court has no business entertaining a matter once it establishes that it lacks jurisdiction. The locus classicus statement of Hon. Justice Nyarangi JA in *The MV "Lilian S"* case still holds good and as a Tribunal, we stand guided by it. The good Judge opined, "*Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.*"
11. Our understanding of the foregoing is that a court of law must first satisfy itself of jurisdiction before proceeding to entertain a claim placed before it. This meant, in our case, that having held that the Tribunal had the jurisdiction to entertain the Claimant's complaint; the Tribunal ought to have given the Respondents the opportunity to file their affidavit of replies.
12. One Peter Ngeno, a process server, swore an affidavit deponing that he served the Respondents on 8<sup>th</sup> May 2017. However, in light of the fact that the 2<sup>nd</sup> Respondent was in Rwanda at the time, it is our considered view that it would not have been possible for the 2<sup>nd</sup> Respondent to furnish her replying affidavit. For this reason, we hold that justice, in the circumstances, calls upon us to give the 2<sup>nd</sup> Respondent the opportunity to file her responses to the Claimant's complaint. To this end, the 2<sup>nd</sup> Respondent has succeeded in proving that there was an error apparent on the face of the Tribunal's judgment dated 12<sup>th</sup> May 2017.
13. In addition, the 2<sup>nd</sup> Respondent has adduced evidence to our satisfaction that she was out of the country at the time the said preliminary objection was determined and judgment delivered to that effect. The right of reply, according to *Article 50 (1) k* of the *Constitution*, demands that one must be accorded the opportunity to adduce

and challenge evidence. Because the 2<sup>nd</sup> Respondent's absence from Kenya was unknown fact to this Tribunal at the time of the determination of the preliminary objection, we are satisfied that the aspect of the discovery of new and important evidence has been met.

14. For the reasons advanced above, this Tribunal is persuaded by the 2<sup>nd</sup> Respondent's application for review of the Tribunal's judgment dated 12<sup>th</sup> May 2017.

**Orders**

15. In the premises, this Tribunal orders as follows:

- a) That the 2<sup>nd</sup> Respondent's application dated 16<sup>th</sup> May 2017 be and is hereby allowed.*
- b) That the 2<sup>nd</sup> Respondent be and is hereby ordered to file her replying affidavit and submissions by 22<sup>nd</sup> May 2017 with respect to the Complaint herein.*
- c) No order will be made as to costs in order to foster party unity and growth of party democracy. Orders accordingly.*

**DATED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY 2017**

**Kyalo Mbobu (Chairman) .....**

**James Atema (Member).....**

**Hassan Abdi (Member).....**